

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

STEPHANIE WHITE

Defendant-Appellant.

SAGINAW COUNTY PROSECUTOR

Attorney for Plaintiff-Appellee

PETER JON VAN HOEK (P26615)

Attorney for Defendant-Appellant

Supreme Court No. _____

Court of Appeals No. 318654

Lower Court No. 12-37836FH

NOTICE OF HEARING

APPLICATION FOR LEAVE TO APPEAL

CERTIFICATE OF SERVICE

STATE APPELLATE DEFENDER OFFICE

BY: PETER JON VAN HOEK (P26615)

Assistant Defender

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NOTICE OF HEARING

TO:

SAGINAW COUNTY PROSECUTOR

Courthouse
111 South Michigan Avenue
Saginaw, MI 48602

PLEASE TAKE NOTICE that on **January 13, 2015**, the undersigned will move this Honorable Court to grant the within

APPLICATION FOR LEAVE TO APPEAL

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Peter Jon Van Hoek

BY:

PETER JON VAN HOEK (P26615)

Assistant Defender

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Date: December 16, 2014

JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Defendant-Appellant Stephanie White was convicted, at a jury trial in Saginaw County Circuit Court, the Hon. Robert L. Kaczmarek presiding, of one count of resisting or obstructing a police officer. MCL 750.81d(1). The trial occurred on August 7-9, 2013. On September 23, 2013, Judge Kaczmarek sentenced Ms. White to a term of 18 months on probation, with \$198 in fees and costs. Ms. White appealed as of right from the conviction and sentence.

On October 21, 2014, the Court of Appeals issued an unpublished, per curiam opinion affirming the conviction. See Appendix A.

The decision of the Court of Appeals is clearly erroneous and will cause manifest injustice to Ms. White, the appeal concerns legal principles of major importance to the state's jurisprudence, and the opinion conflicts with decisions of this Court and of other panels of the Court of Appeals. MCR 7.302 (B).

Ms. White has raised only a single issue in this appeal.¹ That issue concerns whether a police officer legally and constitutionally entered her private residence seeking to execute an arrest warrant for her 22 year old adult son Stephen. The charges at issue arose when the officer asserted that Ms. White resisted his efforts to locate and arrest her son, telling him he needed a search warrant to enter her house. There was no claim made at the trial that the officer had a search warrant for Ms. White's house, as compared to his knowledge of pending arrest warrants for her son. At trial, and on appeal, the primary factual issue is whether Ms. White's son lived at the house, and whether the officer knew or believed that Stephen White lived at that address.

¹ The Court of Appeals below asserted in their opinion that Ms. White raised a second issue concerning the jury instructions in the case. In fact, while the instruction discussed by the Court was highly relevant to the single issue raised in the case, and mentioned in the Fourth Amendment issue, Ms. White did not raise any independent issue concerning that instruction.

Federal constitutional law is manifestly clear that under the Fourth Amendment, the police may not enter the private residence of a third party to execute an arrest of a suspect absent a search warrant for the third party's residence. While the existence of a valid arrest warrant for a suspect permits the police to enter the suspect's own residence to execute the warrant, and do not need to obtain a separate search warrant for that residence, the Fourth Amendment rights of a third party to be secure in his or her home from an unreasonable and warrantless entry are not overcome by the existence of an arrest warrant for a suspect who is or might be present in the third party's home. See *Steagald v United States*, 451 US 204; 101 S Ct 1642; 68 L Ed 2d 38 (1981); *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980). Under Michigan law, a home owner has the right to resist an illegal entry into his or her home by the police. *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012). In order to convict Ms. White under MCL 750.81d(1), the prosecution had to prove, beyond a reasonable doubt, that the officer legally entered her home seeking to arrest her son.

In finding that the officer in this case was shown by the prosecution to reasonably believe that Stephen White lived at his mother's house, the Court of Appeals below focused on three pieces of evidence – that of the five pending arrest warrants against Stephen White one listed his mother's address as his residence (the other four, including the most recently issued, listed a different residential address for Stephen), that the officer had previously “interacted” with Stephen at his mother's house on an undetermined prior date, and that the officer saw Stephen standing in his mother's kitchen when he arrived at the house. That information, even viewed in a light most favorable to the prosecution, did not support the Court's conclusion that the officer reasonably believed that Stephen was residing at that address on the date of the entry. Children, including adult

children, commonly and frequently visit at their parents' house after moving out. The fact that the officer had "interacted" with Stephen at that house on some earlier date did not prove at all that he lived there, either at that earlier date or on the date of the offense. The fact the officer saw Stephen at the house on the date he arrived again does not prove that Stephen was living there – in fact the Court of Appeals acknowledged in their opinion that a reasonable belief by an officer that a suspect is present in a third party's house does not, in the absence of a search warrant for that structure, permit the officer to enter. Appendix A at 4. The fact that four of the five warrants listed a residential address for Stephen, including the warrant most recently issued, different than his mother's house should lead to a conclusion that he does not live there, rather than the opposite.

The Court of Appeals, in their review of the prosecution's evidence, neglected to mention that the officer never testified he believed Stephen lived at the house, or that he even went to the house under a belief that it was Stephen's residence. Ms. White repeatedly told the officer that Stephen did not live there, the police found no evidence in the house purporting to show that he did live there (mail addressed to him there, clothing or other items belonging to Stephen, etc), and did not produce any independent evidence of his residence (mailing address, tax records, etc). While the officer, knowing of the warrants, suspected Stephen might then be present at his mother's house, that suspicion alone did not justify the warrantless entry, even when the officer saw Stephen through a window.

The officer instead should have maintained surveillance on the house. Once Stephen left, the officer would have been fully and constitutionally authorized to arrest him, based on the outstanding warrants. While Stephen would have had no Fourth Amendment claim had the officer found and detained him within his mother's house, the present prosecution was not against Stephen,

but only against his mother for lawfully and reasonably resisting the officer's illegal entry into her home. Accordingly, the conviction was not supported by constitutionally sufficient evidence, and it violated Ms. White's Due Process rights. US Const, Amends V, XIV.

For the reasons detailed in the attached brief in support, this Court should either grant leave to appeal on this fundamental constitutional issue, or should peremptorily reverse the decision of the Court of Appeals and order the conviction and sentence vacated with prejudice.

Defendant moves this Honorable Court to either grant this application for leave to appeal or any appropriate peremptory relief.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Peter Jon Van Hoek

BY:

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Date: December 16, 2014

APPENDIX A

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHANIE WHITE,

Defendant-Appellant.

UNPUBLISHED

October 21, 2014

No. 318654

Saginaw Circuit Court

LC No. 12-037836-FH

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Defendant, Stephanie White, appeals as of right her conviction, following a jury trial, of resisting or obstructing a police officer.¹ The trial court sentenced Stephanie White to serve 18 months' probation. Because the police officer lawfully entered the home to arrest Stephen White, Stephanie White's son, we affirm.

I. FACTS

Bridgeport Township Police Officer Brent Green testified that, on September 5, 2012, he arrived at 2855 Germain Drive. According to Officer Green, Stephen White had five outstanding arrest warrants, one of which identified 2855 Germain Drive as Stephen White's address. Officer Green testified that he had previously been to 2855 at least one other time when Stephen White was there, and that Stephanie White had called "a couple times when Stephen was acting up and we talked." Officer Green testified that he accessed and reviewed the outstanding arrest warrants and Stephen White's physical description in the Law Enforcement Information Network (LEIN) before arriving at the home.

Officer Green testified that he parked one house away from 2855 Germain Drive and approached the home's back door. According to Officer Green, the storm door was open but the screen door was closed. Through the screen door, he saw three people—a man working on the sink, Stephen White, and Stephanie White's thirteen-year-old son. Stephen White started to open the back door, then said "hold up" and moved quickly toward the front of the home.

¹ MCL 750.81d(1).

Officer Green stopped the door from closing and entered the home. He called for Stephen White to stop and asked the thirteen-year-old where Stephen White had gone.

Jareth Glyn testified that he had been working on the kitchen sink for about 45 minutes when Officer Green arrived. According to Glyn, the last time he saw Stephen White was shortly before Officer Green arrived. Glyn testified that Officer Green knocked on the door and the thirteen-year-old went to the door.

The thirteen-year-old testified that when he saw Officer Green approaching, he called upstairs to Stephanie White, who told him to open the door. According to the thirteen-year-old, Officer Green came inside and said that he was chasing Stephen White. At trial, the thirteen-year-old testified that Stephen White had left about 30 minutes before. However, he also testified that he told police officers the truth during an interview four days after the incident, when he stated that Stephen White went to the back door, said "hold up," and then walked quickly out the front door.

Stephanie White testified that she came downstairs, saw Officer Green in her dining room, and asked him what he was doing there. According to Stephanie White, she did not prevent Officer Green from going to the front door and she was behind Officer Green. She did not prevent Officer Green from searching the home. However, she did repeatedly state that Officer Green could not search her house without a warrant, and she put her hand out as "body language . . . like pointing towards that way." She said that she did not attempt to physically block Officer Green.

According to Officer Green, he told Stephanie White that Stephen White had several outstanding arrest warrants. Officer Green attempted to continue through the house to look for Stephen White, but Stephanie White "kind of put her arm up and kind of turned in front of me so that I couldn't progress." Stephanie White told Officer Green that he needed a search warrant to be in her home, and Officer Green informed her that he did not need a warrant because he had seen Stephen White. Stephanie White told Officer Green that Stephen White was not in the home and that he should leave. Officer Green told Stephanie White that he would leave after he confirmed that Stephen White was not there.

According to Officer Green, Stephanie White continued to "get in front of [him]" and yell that he needed a search warrant. Officer Green told Stephanie White that if she did not sit down, he would handcuff her for his safety. Stephanie White continued to loudly demand a search warrant and, because he was concerned for his safety and because "she was becoming irate," he attempted to handcuff Stephanie White. Stephanie White resisted by pulling one of her wrists away, and Officer Green had to pin her against the wall to handcuff her.

The prosecutor charged Stephanie White with resisting or obstructing a police officer. The jury found Stephanie White guilty.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.² Thus, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.³ We review the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor proved crime's elements beyond a reasonable doubt.⁴

B. LEGAL STANDARDS

MCL 750.81d(1) provides in part that a person who "... obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony" The elements of resisting or obstructing are that

(1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties.^[5]

MCL 750.81d(1) does not abrogate a defendant's common-law right to resist an unlawful arrest.⁶ The lawfulness of the officer's arrest is an element that the prosecutor must prove at trial.⁷ Thus, though the lawfulness of an officer's arrest is normally a question of law for the judge, it is a question of fact for the jury in a resisting and obstructing case.⁸

Before making an arrest, an officer generally obtains an arrest warrant from a magistrate on a showing of probable cause.⁹ A validly issued arrest warrant gives the officer authority to enter the suspect's residence in order to arrest the suspect, if the officer has reason to believe that

² *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

³ *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

⁴ *Id.*; *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁵ *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).

⁶ *People v Moreno*, 491 Mich 38, 52; 814 NW2d 624 (2012).

⁷ *Id.* at 51-52; *People v Quinn*, ___ Mich App ___, ___; ___ NW2d ___ (2014); slip op at 2-3.

⁸ *Id.*; *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986).

⁹ *People v Manning*, 243 Mich App 615, 621; 624 NW2d 746 (2000); *Steagald v United States*, 451 US 204, 213; 101 S Ct 1642; 68 L Ed 2d 38 (1981).

the suspect lives at the address and the suspect is currently there.¹⁰ But an officer may not enter a third party's home in order to arrest a suspect without obtaining a search warrant, regardless of whether the officer reasonably believes that the suspect is in the third party's home.¹¹

C. APPLYING THE STANDARDS

Stephanie White contends that there was insufficient evidence for a rational trier of fact to conclude that Officer Green's entry into the home was lawful. Stephanie White contends that Officer Green's entry was unlawful because her home was third party's residence. We disagree.

When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact's role to determine the weight of the evidence or the credibility of the witnesses.¹² Here, four of the five arrest warrants listed Stephen White's address as another location. And witnesses at trial, including Stephanie White and the thirteen-year-old, testified that Stephen White did not actually live at 2855 Germain Drive.

However, this does not negate that one of the warrants *did* indicate that Stephen White's residence was 2855 Germain Drive. Further, Officer Green testified that he had previously interacted with Stephen White at 2855 Germain Drive. Officer Green also testified that when he arrived at 2855 Germain Drive, he saw Stephen White in the home's kitchen through the open screen door.

Viewing this evidence in the light most favorable to the prosecutor, we conclude that a rational juror could find that Officer Green had reason to believe that Stephen White lived at the residence because a warrant listed 2855 Germain Drive as Stephen White's residence, Officer Green had previously interacted with Stephen White at Germain Drive, and Officer Green saw Stephen White in the home. A rational juror could also find that Officer Green had reason to believe Stephen White was currently in the home because Officer Green saw him through the home's screen door.

Accordingly, viewing the evidence in the light most favorable to the prosecutor, we conclude that sufficient evidence supported Stephanie White's resisting and obstructing conviction.

¹⁰ *Payton v New York*, 445 US 573, 603; 100 S Ct 1371; 63 L Ed 2d 639 (1980).

¹¹ *Steagald*, 451 US at 213; *Garden City v Stark*, 120 Mich App 350, 351-353; 327 NW2d 474 (1982).

¹² *Wolfe*, 440 Mich at 514-515; *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

III. JURY INSTRUCTIONS

Stephanie White briefly asserts that the trial court's instruction that Officer Green could rely on LEIN information improperly tainted the jury. We conclude that Stephanie White has waived our review of this issue.

A defendant's waiver intentionally abandons and forfeits appellate review of a claimed deprivation of a right.¹³ A defendant may waive his or her challenge to jury instructions.¹⁴ When the trial court asks the party whether it has any objections to the jury instructions and the party responds negatively, it is an affirmative approval of the trial court's instructions.¹⁵

Here, the trial court twice asked defense counsel whether counsel was satisfied with the jury instructions, and counsel expressed satisfaction with the instructions. Thus, we conclude that counsel waived any challenge to the trial court's jury instructions.

IV. CONCLUSION

We conclude that the prosecutor presented sufficient evidence of the lawfulness of Officer Green's entry into 2855 Germain Drive. We also conclude that Stephanie White has waived any challenge to the jury instructions.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Michael J. Riordan

¹³ *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

¹⁴ *Id.* at 215.

¹⁵ *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 332 (2002).

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Stephanie White

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STATEMENT OF JURISDICTION

Defendant-Appellant was convicted in the Saginaw County Circuit Court by jury trial, and a Judgment of Sentence was entered on September 23, 2013. A Claim of Appeal was filed on October 16, 2013, by the trial court pursuant to the indigent defendant's request for the appointment of appellate counsel dated October 1, 2013, as authorized by MCR 6.425(F)(3). This Court has jurisdiction in this appeal as of right provided for by Mich Const 1963, art 1, §20, pursuant to MCL 600.308(1); MCL 770.3; MCR 7.203(A), MCR 7.204(A)(2).

STATEMENT OF QUESTIONS PRESENTED

- I. SHOULD MS. WHITE’S CONVICTION FOR RESISTING AND OBSTRUCTING OFFICER GREEN BE REVERSED, AND THE CHARGE ORDERED DISMISSED, AS THE PROSECUTION FAILED TO PRESENT CONSTITUTIONALLY SUFFICIENT EVIDENCE OF THAT OFFENSE IN THAT OFFICER GREEN WAS IN VIOLATION OF MS. WHITE’S FOURTH AMENDMENT RIGHTS WHEN HE ENTERED HER HOUSE WITHOUT A SEARCH WARRANT FOR THOSE PREMISES, AND WHERE UNDER MICHIGAN LAW A PERSON HAS THE COMMON LAW RIGHT TO RESIST AN UNCONSTITUTIONAL ENTRY?**

Court of Appeals answers, “No.”

Trial Court made no answer.

Defendant-Appellant answers, "Yes".

STATEMENT OF FACTS

Defendant-Appellant Stephanie White was convicted, at a jury trial in Saginaw County Circuit Court, the Hon. Robert L. Kaczmarek presiding, of one count of resisting or obstructing a police officer. MCL 750.81d(1). The trial occurred on August 7-9, 2013. On September 23, 2013, Judge Kaczmarek sentenced Ms. White to a term of 18 months on probation, with \$198 in fees and costs. She appealed as of right.

The charges at issue in this case arose from an incident during the early evening on September 5, 2012, when Bridgeport Township Police Officer Brent Green entered Ms. White's personal residence at 2855 Germain Drive seeking to execute arrest warrants against her 22-year old son, Stephen White. Ms. White, who is age 44, was arrested by Officer Green when she questioned his authority to enter her house, and sought to bar him from searching her residence without a search warrant.

Officer Green testified he knew of several arrest warrants for Mr. White, and went to Ms. White's residence to see if he was there. (I, 69-72). He did not have paper copies of the warrants, but rather was aware of the issuance of the warrants from a LIEN report on his squad car's computer. (I, 73-74). He received that information just before he arrived at the house. (I, 73). The prosecution admitted into evidence, without objection from the defense, the LIEN information that Officer Green relied upon. (I, 73-75).² He indicated he had been to the house at times in the past when there had been reports of arguments between Mr. White and his girlfriend. (I, 72). He was in his full police uniform at the time, with a handgun and taser. (I, 76).

² See Appendix A. These pages are from Officer Green's police report, dated September 6, 2012 at 12:56 am. Appellate counsel for Ms. White is not sure if the originals of these pages comprised the exhibit used at trial, as that exhibit was not provided to counsel or contained in the trial court file, but the LIEN information in the pages matches the description of that information given during Officer Green's testimony.

Officer Green parked one door down from Ms. White's townhouse, and walked up to the rear door of her residence. (I, 78). He alleged that the screen door was closed, but the storm door was open. Officer Green asserted he looked through the door and saw a white male working in the kitchen, which is entered through the rear doors, and that when he knocked on the door two African-American males, one of whom he believed was Stephen White, walked up to the screen door. (I, 78-79). He testified that Mr. White, upon seeing him outside, turned around and went back further into the house. (I, 79-80). He believed the other African-American male was Stephen White's younger brother, who was around 11 years old.

Officer White testified he called to Stephen White to stop, but that Mr. White continued to walk towards the front portion of the townhouse. (I, 80). Officer White then opened the screen door and entered the house. (I, 81). Inside, he first encountered the younger male, and asked him where Stephen had gone. He did not get any response, and then Ms. White walked around a corner into the dining area of the house, where the officer was then located. (I, 81-82). At this point he no longer had Stephen White in his vision. (I, 82). When he asked Ms. White where Stephen was, she responded by asking him why he was looking for her son. Officer White then advised her he had arrest warrants for Stephen. (I, 83).

According to the officer, Ms. White then stated to him that he needed a search warrant to enter her house. (I, 83). When he went to walk further towards the front area of the residence, Ms. White allegedly stood in front of him and held her arm out to impede his progress or prevent him from going up the stairs to the second floor. (I, 83). Officer Green testified he pushed past Ms. White, and told her to go sit in a chair in the living room. (I, 84).

In response to a question from the prosecutor, Officer Green acknowledged that he did not have any search warrant for Ms. White's residence, and that he advised Ms. White he did not

need one because he had seen Stephen in the house and Stephen had walked away from him. (I, 85). According to the officer, Ms. White continued to state that he needed a search warrant, and again sought to bar his way from going further into the house. (I, 85). After a short time, during which Ms. White stated she was going to make a 911 call, Officer Green arrested her and placed her into handcuffs. (I, 86-87). He stated she briefly resisted his efforts to cuff her, but he was able to get the handcuffs on her and then took her outside and placed her into the rear seat of his squad car. (I, 88).

A subsequent search of the townhouse, and the front area outside the residence using a police tracking dog, resulted in no evidence of Stephen White's presence or current location. (I, 89). After this search, Officer Green released Ms. White from his custody, telling her that if Stephen returned to the house that night and she called 911 with that information, he would not take her to jail, but that he was still intending to seek an arrest warrant for her. (I, 90).

Officer Green stated in cross-examination that Stephen White did not attempt to close the rear storm door before he walked away. (I, 93). He acknowledged that Ms. White did not attempt to grab or strike at him, but only to impede his progress throughout the house. (I, 94). The white male in the kitchen was determined to be a maintenance man working on the kitchen sink. He was later told by the younger son that Stephen went out the front door, but Officer Green did not see Stephen leaving the house. (I, 98). He agreed he had no other intent or reason to search Ms. White's house other than to arrest Stephen. (I, 98).

The only other prosecution evidence came from Jareth Glyn, the maintenance man who was working in Ms. White's kitchen when Officer Green entered the rear door. When he arrived at the house that evening, there were three people in the house – Ms. White and two African-American males, one taller and older and the other a child. (I, 104). He recalled hearing a knock

at the back door, and seeing the child come up to that door. He did not see if the child opened the door for anyone. (I, 105).

Mr. Glyn overheard the incident between Ms. White and Officer Green while they were in the living room, and testified that Ms. White asked the officer about a warrant and Officer Green responded that “he didn’t need a warrant because he had just seen the person he was looking for move through the apartment.” (I, 106). He heard the argument over a warrant continue, and then saw Ms. White being led out of the residence in handcuffs. He believed the older male was in the dining room when the officer entered the back door. (I, 110).

The defense presented testimony from two witnesses. Ms. White testified on her own behalf. She stated she came downstairs and saw Officer Green in her dining room, and asked him what he was doing there. (II, 7). When he responded that he was looking for her son Stephen, she told him Stephen was not there. When she asked him why he was looking for Stephen, Officer Green replied that he had warrants for Stephen. (II, 7). In response, Ms. White told the officer that Stephen did not live there, to which he replied that he had “chased him here.” (II, 7).

Ms. White testified she had not seen Stephen at the house around that time. (II, 8). She again told the officer that Stephen does not live at her house, to which Officer Green responded that Stephen has “multiple addresses.” (II, 9). He then went to the front door and looked outside. When she asked the officer whether he had a warrant, he told her he did not need one. (II, 9). Ms. White denied trying to prevent Officer Green from going to the front door. (II, 9-10). She denied assaulting the officer, stating that all she did was to put out her hand to keep him from going upstairs, but he pushed past her and went up the stairs. (II, 12, 27).

Ms. White admitted she was upset over the officer being in her house and going upstairs. When they came back downstairs, she again told the officer he needed a warrant to enter her house, at which point he arrested her and placed her in handcuffs. (I, 13-14).

Ms. White did not deny knowing there were arrest warrants out for her son. (II, 18). When asked in cross-examination if Stephen had been at her house at any time that day, she replied he had been there earlier, after she had “called him over to eat.” (II, 19). Ms. White stated Stephen came by her house one or twice every two weeks, stating “I hardly see him.” (II, 19).

Armani White, Ms. White’s younger son (age 13 as of the date of trial) testified he heard someone knock on the door, and called out to his mother, who was upstairs. He asserted she called down to him to open the door, which he did and the officer entered. (I, 115). According to the witness, the officer asked if Stephen was there, stating he “was just chasing him.” (I, 115). He heard the officer tell his mother he had seen Stephen run out the front door. (I, 116). He heard his mother tell the officer he could not go upstairs, and ask to see a search warrant, but the officer ignored her and went upstairs anyway. (I, 116-117). When the officer came back downstairs and said he wanted to search the basement, his mother said he could not, and the officer then arrested her. (I, 117). He did hear Officer Green tell his mother that he did not need any warrant. (I, 117).

Armani stated he was the only person who went to the rear door in response to Officer Green’s knocking. (I, 117-118). He had seen Stephen at the house earlier that day. (I, 117-118).

Armani stated on cross-examination that Stephen left the house around 30 minutes before Officer Green arrived. (I, 120). He denied that Stephen lived at the house, stating the other bedroom besides his and his mother’s belonged to his other brother, Dquan White. (I, 121). He

did not recall telling any police officer that Stephen went to the back door with him. He denied speaking to his mother about the incident, or being told by her what to testify to at the trial. (I, 124-125).

In his final instructions to the jury, Judge Kaczmarek told them a police officer can rely on LIEN information “to enter a house to effectuate an arrest warrant.” (III, 42). The jury convicted Ms. White on the charged offense. (III, 46-47).

- I. **MS. WHITE'S CONVICTION FOR RESISTING AND OBSTRUCTING OFFICER GREEN SHOULD BE REVERSED, AND THE CHARGE ORDERED DISMISSED, AS THE PROSECUTION FAILED TO PRESENT CONSTITUTIONALLY SUFFICIENT EVIDENCE OF THAT OFFENSE IN THAT OFFICER GREEN WAS IN VIOLATION OF MS. WHITE'S FOURTH AMENDMENT RIGHTS WHEN HE ENTERED HER HOUSE WITHOUT A SEARCH WARRANT FOR THOSE PREMISES, AND WHERE UNDER MICHIGAN LAW A PERSON HAS THE COMMON LAW RIGHT TO RESIST AN UNCONSTITUTIONAL ENTRY.**

Standard of Review and Issue Preservation:

The appropriate appellate standard of review for a constitutional claim of insufficient evidence is *de novo*. See *People v Hawkins*, 245 Mich App 439, 457 (2001). A claim of constitutionally insufficient evidence can be fully raised for the first time on appeal, without any requirement of a motion for a directed verdict during the trial. See *People v Patterson*, 428 Mich 502 (1987).

Argument:

The critical inquiry for an appellate court reviewing a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found the charged crime was proven beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Hampton*, 407 Mich 354 (1979). The existence of merely some evidence to support the conviction is not enough. In *Jackson*, the Supreme Court disavowed the prior “no evidence” insufficiency standard, from *Thompson v City of Louisville*, 362 US 199; 80 S Ct 624; 4 L Ed 2d 654 (1960), which required reversal only upon a record “wholly devoid of any relevant evidence” of guilt, finding that standard “simply inadequate” to protect against misapplications of the constitutional standard of reasonable doubt.:

That the *Thompson* “no evidence” rule is simply inadequate to protect against misapplications of the constitutional standard of

reasonable doubt is readily apparent. “[A] mere modicum of evidence may satisfy a ‘no evidence’ standard” *Jacobellis v. Ohio*, 378 U.S. 184, 202, 84 S.Ct. 1676, 1686, 12 L.Ed.2d 793 (Warren, C.J., dissenting). Any evidence that is relevant-that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence, cf. Fed.Rule Evid. 401-could be deemed a “mere modicum.” But it could not seriously be argued that such a “modicum” of evidence could by itself rationally support a conviction beyond a reasonable doubt. The *Thompson* doctrine simply fails to supply a workable or even a predictable standard for determining whether the due process command of *Winship* has been honored.

443 US at 320.

The Court held a reviewing court must instead find there was “evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” *Id* at 316 (emphasis added); *In re Winship*, 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970). While the evidence must be considered in a light most favorable to the prosecution, a reviewing court cannot indulge in speculation but must find sufficient evidence to support a finding of guilt beyond a reasonable doubt as to every element of the charged offense. *Hampton, supra*.

A conviction that is not supported by sufficient evidence under this standard violates due process of law. US Const, Amends V, VIX; Const 1963, art 1, § 17; *Jackson, supra*. Thus, if sufficient evidence is not introduced, due process requires reversal and a judgment of acquittal must be entered. *Hampton, supra* at 368; *People v Hubbard*, 387 Mich 294, 299 (1972); *People v Johnson*, 460 Mich 720, 723 (1999).

In the case at bar, the prosecution failed to present constitutionally sufficient evidence in support of Ms. White’s conviction for resisting or obstructing Officer Green. Under the controlling Fourth Amendment precedent from the United States Supreme Court, Officer Green was not authorized to enter Ms. White’s private residence to seek to arrest her adult son, Stephen

White, even given the existence of valid warrants for Stephen's arrest, where the prosecution presented insufficient evidence that Mr. Green also resided at that house. US Const, Amend IV. Under the controlling Michigan law, if the officer's entry into the private residence violated the Fourth Amendment rights of the owner, Ms. White, she could legally and permissibly resist that entry and any related search facilitated by the entry. On the record of this case, Ms. White's conduct was legal, and thus her conviction was not supported by constitutionally sufficient evidence, under the *Jackson* and *Hampton* standard, requiring this Court to vacate her conviction and sentence and order the charge dismissed with prejudice.

United States Supreme Court precedent clearly sets forth that a validly issued arrest warrant **only** acts as a contemporaneous search warrant for the personal residence of the person named in that arrest warrant. In *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980), the Supreme Court considered whether the police need a validly issued arrest warrant to enter a suspect's home to effectuate that arrest, or whether, as with arrests made in a public place where there is probable cause to believe the suspect committed the offense, such an arrest can be made absent a warrant. The Court held that given the basic principles of Fourth Amendment law that protect a person's home, a warrantless arrest inside the person's home, absent sufficient exigent circumstances, is unreasonable:

In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant. *Id.* at 590.

The Court ruled, however, that where the police have a validly issued arrest warrant for a person, that warrant is sufficient, standing alone, to justify entry into the person's home, without the need for the police to separately or concurrently obtain a search warrant for the residence:

Finally, we note the State's suggestion that only a search warrant based on probable cause to believe the suspect is at home at a given time can adequately protect the privacy interests at stake, and since such a warrant requirement is manifestly impractical, there need be no warrant of any kind. We find this ingenious argument unpersuasive. It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the **limited authority to enter a dwelling in which the suspect lives** when there is reason to believe the suspect is within. *Id.* at 602-603. (Emphasis added).

Implicit in this language is the limited authority to enter a private residence based on an arrest warrant alone extends **only** to the residence of the person named in the warrant, and not to premises belonging to third parties. That limitation was made explicit in *Steagald v United States*, 451 US 204; 101 S Ct 642; 68 L Ed 2d 38 (1981). In *Steagald*, the police entered Mr. Steagald's private residence looking for a man named Lyons, for whom they had an arrest warrant and who they knew was a friend of Steagald's. They did not find Mr. Lyons inside Mr. Steagald's house, but in searching the house they found incriminating evidence against Mr. Steagald. On review, the United States Supreme Court held this evidence should have been suppressed, even though it was found in plain view, as the police did not have the constitutional authority to enter Mr. Steagald's residence, pursuant to the arrest warrant for Lyons, in the absence of a valid search warrant for Mr. Steagald's home:

Here, of course, the agents had a warrant—one authorizing the arrest of Ricky Lyons. However, the Fourth Amendment claim here is not being raised by Ricky Lyons. Instead, the challenge to the search is asserted by a person not named in the warrant who was convicted on the basis of evidence uncovered during a search of his residence for Ricky Lyons. Thus, the narrow issue before us is whether an arrest warrant—as opposed to a search warrant—is adequate to protect the

Fourth Amendment interests of persons not named in the warrant, when their homes are searched without their consent and in the absence of exigent circumstances.

* * *

Thus, while the warrant in this case may have protected Lyons from an unreasonable seizure, it did absolutely nothing to protect petitioner's privacy interest in being free from an unreasonable invasion and search of his home. Instead, petitioner's only protection from an illegal entry and search was the agent's personal determination of probable cause. In the absence of exigent circumstances, we have consistently held that such judicially untested determinations are not reliable enough to justify an entry into a person's home to arrest him without a warrant, or a search of a home for objects in the absence of a search warrant. *Payton v. New York, supra*; *Johnson v. United States, supra*. We see no reason to depart from this settled course when the search of a home is for a person rather than an object. FN7

FN7. Indeed, the plain wording of the Fourth Amendment admits of no exemption from the warrant requirement when the search of a home is for a person rather than for a thing. As previously noted, absent exigent circumstances or consent, an entry into a private dwelling to conduct a search or effect an arrest is unreasonable without a warrant. The second clause of the Fourth Amendment, which governs the issuance of such warrants, provides that “no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” This language plainly suggests that the same sort of judicial determination must be made when the search of a person's home is for another person as is necessary when the search is for an object. Specifically, absent exigent circumstances the magistrate, rather than the police officer, must make the decision that probable cause exists to believe that the person or object to be seized is within a particular place.

In *Payton*, of course, we recognized that an arrest warrant alone was sufficient to authorize the entry into a person's home to effect his arrest. We reasoned:

“If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law. Thus, for Fourth Amendment purposes, an arrest warrant founded on

probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” 445 U.S., at 602–603, 100 S.Ct., at 1388–1389.

Because an arrest warrant authorizes the police to deprive a person of his liberty, it necessarily also authorizes a limited invasion of that person's privacy interest when it is necessary to arrest him in his home. **This analysis, however, is plainly inapplicable when the police seek to use an arrest warrant as legal authority to enter the home of a third party to conduct a search.** Such a warrant embodies no judicial determination whatsoever regarding the person whose home is to be searched. Because it does not authorize the police to deprive the third person of his liberty, it cannot embody any derivative authority to deprive this person of his interest in the privacy of his home. Such a deprivation must instead be based on an independent showing that a legitimate object of a search is located in the third party's home. We have consistently held, however, that such a determination is the province of the magistrate, and not that of the police officer.

A contrary conclusion—that the police, acting alone and in the absence of exigent circumstances, may decide when there is sufficient justification for searching the home of a third party for the subject of an arrest warrant—would create a significant potential for abuse. Armed solely with an arrest warrant for a single person, the police could search all the homes of that individual's friends and acquaintances. *Id.* at 212, 213–215. (Emphasis added).

The *Steagald* Court rejected the government's claim that requiring the police to obtain a search warrant for a third party's home in order to effectuate an arrest of a person believed to be in that home would be unduly burdensome for the police:

The Government also suggests that practical problems might arise if law enforcement officers are required to obtain a search warrant before entering the home of a third party to make an arrest. The basis of this concern is that persons, as opposed to objects, are inherently mobile, and thus officers seeking to effect an arrest may be forced to return to the magistrate several times as the subject of the arrest warrant moves from place to place. We are convinced,

however, that a search warrant requirement will not significantly impede effective law enforcement efforts.

First, the situations in which a search warrant will be necessary are few. As noted in *Payton v. New York*, *supra*, at 602–603, 100 S.Ct., at 1388–1389, an arrest warrant alone will suffice to enter a suspect's own residence to effect his arrest. Furthermore, if probable cause exists, no warrant is required to apprehend a suspected felon in a public place. *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976). Thus, the subject of an arrest warrant can be readily seized before entering or after leaving the home of a third party. Finally, the exigent-circumstances doctrine significantly limits the situations in which a search warrant would be needed. For example, a warrantless entry of a home would be justified if the police were in “hot pursuit” of a fugitive. See *United States v. Santana*, 427 U.S. 38, 42–43, 96 S.Ct. 2406, 2409–2410, 49 L.Ed.2d 300 (1976); *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967). Thus, to the extent that searches for persons pose special problems, we believe that the exigent-circumstances doctrine is adequate to accommodate legitimate law enforcement needs.

* * *

Whatever practical problems remain, however, cannot outweigh the constitutional interests at stake. Any warrant requirement impedes to some extent the vigor with which the Government can seek to enforce its laws, yet the Fourth Amendment recognizes that this restraint is necessary in some cases to protect against unreasonable searches and seizures. We conclude that this is such a case. The additional burden imposed on the police by a warrant requirement is minimal. In contrast, the right protected—that of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government—is weighty. Thus, in order to render the instant search reasonable under the Fourth Amendment, a search warrant was required. *Id.* at 220–222.

In the case at bar, the prosecution presented no evidence that Stephen White lived at 2855 Germain Drive on September 5, 2012. Officer Green, the only prosecution witness other than the maintenance man, Jareth Glyn, who was only coincidentally at the house when Officer Green entered, never testified that he knew or even suspected Stephen Green then resided with his mother. No documentary or physical evidence (correspondence, clothing, personal items, etc) was found within the house on September 5 or presented seeking to prove Stephen Green was

then living at the house. Mr. Green was an adult, age 22, as compared to his younger brothers who still lived at home.

The documentary evidence that was produced at the trial – the LIEN information on the outstanding arrest warrants for Stephen Green – showed he had a separate living address than his mother. The five outstanding warrants shown on the LIEN, with entry dates ranging from March 15, 2012 to August 13, 2012, show that on four of the warrants – the three issued on March 15 and the final warrant issued on August 13 (approximately three weeks prior to the charged incident), Stephen White's address is listed as 4576 Hepburn Place, in Saginaw, Michigan. See Appendix A. On only one of the warrants, issued on August 3, 2012, is an address of 2855 Germain listed. This information thus showed that Stephen White's common and most recent address was the Hepburn Place residence, and not that of his mother. The prosecution did not present any evidence that Mr. White had moved back into his mother's home between August 13 and September 5, 2012.

While evidence presented by the defense is not and cannot be considered by an appellate court reviewing a prosecution's case-in-chief for sufficiency of the evidence under the *Jackson* standard, it should be pointed out that the **only** evidence in the case relating to Stephen Green's residency on September 5 was the consistent testimony of both Stephanie and Armani Green that Stephen did not live at the house. (I, 121; II, 7-9, 19).

Even viewed in a light most favorable to the prosecution, the record does not support a conclusion that Stephen White was living at 2855 Germain when Officer Green entered the house seeking to arrest him. Accordingly, that entry, in the absence of a separate search warrant issued for Ms. White's residence, violated her Fourth Amendment rights, and was an

unreasonable and unconstitutional intrusion of her protected space. *Payton, supra; Steagald, supra.*

There were no exigent circumstances, nor any other applicable warrant exception, which justified Officer Green's warrantless entry into Ms. White's house. The officer did not testify to any "hot pursuit" of Stephen White. *Warden v Hayden*, 387 US 294; 87 S Ct 1642; 18 L Ed 2d 782 (1967). The LIEN information shows that none of the alleged offenses on which the warrants for his arrest were issued occurred on the date of the entry. Officer Green did not testify that he saw Stephen White outside the house, and pursued him to the residence.³ He instead clearly stated he first saw Mr. White, standing inside the house, as he approached the open rear storm door of the residence:

Q. [MR. TIBBS] When you went to the location, can you tell the jurors the contact that you had with the person who answered the door?

A Yes. When I arrived at the residence, I walked up to the back door, and there was two doors, there's a storm door, your normal door, which was open, and there was a screen door. The screen door was — I was able to look inside and I could see a white male working on the sink of the property, which was -- if you look in the back door you're looking right into the kitchen, so he was under the sink. I knocked on the door. And a black male that I identified as Stephen came out with a younger black male, and he started to open the screen door, and he looked at me and he said hold on, and he took off.

* * *

Q So you feel as though you would be readily able to recognize him?

A At that time, yes.

Q You said that you had a description through LEIN about six three, 235 pounds, black male?

A Yes.

Q Did the person you identified as Stephen, did he appear to fit that description?

A Yes.

Q You stated that there was a -- I guess a younger black male there?

³ While both Ms. White and Armani Green alleged that Officer White stated to them he had "chased" his older brother to the house (I, 115; II, 7), the officer's testimony did not assert any such "chase" occurred that night.

A Yes.

Q Was he obstructing your vision of Stephen?

A No.

Q As a matter of fact, this younger black male, he's the younger brother of Stephen that you came to learn?

A Yes.

Q Is he quite a bit shorter than Stephen?

A He was a lot shorter.

Q Do you recall how old he was?

A I believe he was like 11. I'm not 100 percent sure though.

Q So you did have contact with Stephen White?

A Yes.

Q And he said -- can you tell us what you said when you came to the door?

A I knocked on the door. As I said, Stephen came to the door, and he looked at me, saw who I was, and said hold up. And I said Stephen, stop. And he just continued to walk towards the front of the complex.

* * *

Q When you stated that he stated something to the effect of hold on for a minute, you said he I guess took off, can you tell us a little more descriptively what you mean by he took off? Did he run in a full sprint? Did he walk?

A He was walking quite fast. Faster than I could see where he was going.

Q And when he did that, what did you do in response?

A The door was --- like I said, he started to open the door, so I grabbed the door from slamming and I walked inside. (I, 78-81).

Officer Green did not testify to seeing or confronting Stephen Green outside of the house, or that he saw Mr. White engaging in any criminal or violent conduct while inside the house. He had no information that anyone in the home had been injured or subjected to any assaultive or threatening behavior by Mr. White. There were no exigent circumstances which permitted Officer Green to ignore the requirement of a search warrant to enter Ms. White's residence.

The fact that Officer Green did purportedly see Stephen Green inside the house did not justify his entry absent a search warrant.⁴ He could have, and should have, either waited outside the house for Mr. White to exit, at which point he could have validly executed the warrants and arrested him, and/or sought to obtain a search warrant for Ms. White's home. The fact that either or both of those two actions would have taken time, or been less efficient than just entering the house to look for Mr. White, does not excuse the violation of Ms. White's Fourth Amendment rights:

Any warrant requirement impedes to some extent the vigor with which the Government can seek to enforce its laws, yet the Fourth Amendment recognizes that this restraint is necessary in some cases to protect against unreasonable searches and seizures. We conclude that this is such a case. The additional burden imposed on the police by a warrant requirement is minimal. In contrast, the right protected—that of presumptively innocent people to be secure in their homes from unjustified, forcible intrusions by the Government—is weighty.

Steagald, supra at 222.

It is anticipated the prosecution, in response to Ms. White's arguments, may seek to argue that a different warrant exception than exigent circumstances applies in this case – that Officer Green entered the house with consent, thus abrogating the need for a warrant. See, generally, *Schneckloth v Bustamonte*, 412 US 218; 93 S Ct 2041; 36 L Ed 2d 854 (1973). To assert a consensual entry in this case, however, the prosecution would have to rely entirely on the

⁴ While Ms. White is not an attorney, or trained in the law, she intuitively understood there is a difference between entry of the residence of the person named in an arrest warrant and entering the residence of a third party:

Q[MR. TIBBS] So you're saying that if he did see your son, then he would have the lawful right to enter your home?

A No. I still wanted a warrant. That's my home, not Stephen's (II, 19).

testimony of a defense witness, Armani White, Ms. White's 13 year old son. In his direct testimony, Armani stated:

Q.[MR. HERRMANN] Okay. What happened that day? Did a police officer come to your door?

A (Witness nods head.)

Q Can you tell us what happened?

A Okay. Officer Green came to the door. I looked out the blinds and seen Officer Green. I went all the way upstairs just to call my mama because her door was closed. She said open the door. I opened it and he came in.

Q You opened the door?

A (Witness nods head.) (I, 115).

For three reasons, this testimony does not support a legal conclusion that Officer Green made a valid, warrantless consensual entry into Ms. White's house. First, and most obviously, neither Officer Green nor Ms. White asserted he had consent from either her or Armani to enter the house. In the testimony from Officer Green quoted at length above, he never claimed he was allowed into the house by Armani White. Instead, he unambiguously stated he opened the door and entered the kitchen on his own volition when Stephen White allegedly stopped opening the door, and walked away, once he saw there was a uniformed officer outside:

Q And when he did that, what did you do in response?

A The door was — like I said, he started to open the door, **so I grabbed the door from slamming and I walked inside.** (I, 81).
(Emphasis added).

Directly contrary to Armani's assertion, Officer Green testified that not only did Armani not come to the door and let him inside, but that he first had contact with Armani only **after** he entered the house:

A The door was — like I said, he started to open the door, so I grabbed the door from slamming and I walked inside.

Q And what happened from there?

A I came around the corner and I asked the younger brother, I said, where did Stephen go, and he didn't respond. And at that time Miss White was coming around the corner.

Q Can you give us an idea when you say coming around the corner, what do you mean by that?

A When you walk in, like I say, there's a kitchen. Right when you walk in the door there is another door to the left, which goes into, I believe it's like a dining room type of set up. So I went in the kitchen and into that dining room area. And then there's another entrance, a bigger like entrance where you go into the living room. And then when you get in the living room of the complex, there's a front door and a stairwell. And the front door and stairwell are pretty much right across from each other. (I, 81-82).

At no point of this testimony did Officer Green assert that Armani opened the rear door and permitted him access to the house, let alone that Armani was even in the kitchen when he himself opened the door. To the contrary, he testified he went through the kitchen and "came around the corner" into the dining room before he encountered Armani and asked him where Stephen had gone.

Similarly, at no point of Ms. White's testimony did she state either that Armani called up to her⁵ or that she directed him to open the rear door to whoever was outside.⁶ Instead, she testified she was upstairs when Officer Green entered the house, and first saw him when she came downstairs and he was already in the house – consistent with his own testimony:

Q Okay. I'm going to go to September 5th of last year, the date we've been talking about. What's the first thing you remember when the officer came in, came into your house?

A When I came from downstairs or just when I saw him?

* * *

Q Now, when you first saw Officer Green, who spoke first?

A I did.

Q And what was it that you said?

A My first question was what is he doing in my house.

Q How did he react?

⁵ Even in Armani's testimony he did not state that he told his mother a police officer was at the door, but only that he called up to her. Accordingly, even if his testimony is accurate, it is not direct proof she was aware that she was giving consent to the police to enter her house.

⁶ While Ms. White was asked in cross-examination whether in a pre-trial statement to the police she stated she told Armani to open the door, that out-of-court inconsistent statement, even if accurately transcribed, was impeachment evidence and cannot be used as substantive evidence of consent. (II, 20). See MRE 613.

A He yelled. He said I'm looking for Stephen. I'm looking for your son. I said well, he ain't here. I said what do you want him for? He said he have warrants. I said so. But this is not his address. What is you doing here? And he said well, I chased him here.

* * *

Okay, where was it in these photos that you first saw Officer Green?

A This one.

Q This one here, and were looking – that's Exhibit No. 5, that's your dining room looking into your --

A Living room.

Q Living room. Can you point out where he was standing?

A Right there by the table.

* * *

A At that time when I came down the stairs, he was — when I come down the stairs, it's the living room, then the dining room, and he was already in the dining room by the table. And I asked him what is you doing in my house. He was like, I'm looking for your son. I said well, this is not his address. (II, 4,7,8,9).

Given the testimonies of both Officer Green and Ms. White, Armani's assertion that he opened the door and gave the officer consensual access to the house is clearly unreliable. At no point did the prosecution seek to argue that Officer Green was in the house by consent, as compared with his testimony that he entered the house on his own volition to execute the arrest warrants on Stephen White. In the prosecutor's closing and rebuttal arguments to the jury, he never asserted that Officer White had consent to enter the house, and never mentioned Armani White's testimony claiming he opened the door for the officer. Instead, the prosecutor explicitly asserted, contrary to the law detailed above, that the arrest warrants for Stephen White authorized Officer Green to enter the house, and told the jury that Judge Kaczmarek would instruct them, as a matter of law, that the entry in this case was legal and constitutional:

[MR. TIBBS] As I stated before, I think this case can be summed up in maybe one or two sentences, and I believe Miss White summed up the case during her testimony. And when she was specifically asked is it you wanted the search warrant or is it because the law requires — or the law — or do you require the search warrant or does the law require the search warrant. And she basically said in a nutshell that no, I wanted the search warrant. **But that's not**

what the law requires. And she felt that, from my point of view, that she had the authority to - or the ability to obstruct Officer Green in his lawful performance of his duty.

* * *

I believe the Judge is going to instruct you that the officer had the lawful authority to enter the house based on the LEIN information that he had.

* * *

And specifically Exhibit 1 was admitted. And it shows you that this was a printout that Officer Green reviewed some time prior to knocking on that door and attempting to execute or effectuate an arrest warrant. This is what he looked at. An arrest warrant. A valid arrest warrant for the person Stephen White **who he believed was at that residence.**

* * *

But on the other hand, she wants to tell Officer Green how to do his job, like you need a search warrant. No, I don't need a search warrant. And **the Judge is going to tell you that he didn't need a search warrant.** (III, 4, 5, 6, 29). (Emphasis added).

As predicted by the prosecutor, in his final instructions to the jury, Judge Kaczmarek did indeed instruct the jurors, as a matter of law, that:

[THE COURT] An officer who relies on LEIN information has the legal authority to enter a house to effectuate an arrest warrant. (III, 42).

That instruction, which was directly contrary to the United States Supreme Court precedent in *Steagald, supra*, when the house in question, as here, was not the residence of the person named in the arrest warrant, was reversibly erroneous.⁷ That instruction is not part of the standard criminal jury instruction on the essential elements of this offense. CJI 2d, 13.1. Its inclusion by the trial judge in this matter was an error of law, and irreparably tainted the jury deliberations in the case.

⁷ The fact that Ms. White's trial counsel, in his closing argument to the jury, also erroneously told the jury the arrest warrant permitted Officer Green to enter her house, is irrelevant to the issue of the sufficiency of the evidence. (III, 20). Not only is it clear that statements made by attorneys during arguments are neither evidence nor statements of law a jury can rely on, an attorney cannot waive, forfeit, or overrule an interpretation of the United States Constitution by the United States Supreme Court. The opinion in *Steagald, supra*, controls this Fourth Amendment issue regardless of the legal errors made by the prosecutor, Judge Kaczmarek, and trial defense counsel.

The second reason neither the prosecution nor this Court can rely on a consent theory to justify the entry is that the prosecution presented **no** evidence of consent during their case-in-chief. As indicated above, in his testimony for the prosecution Officer Green never claimed he was given consent to enter the residence by Armani White, and acknowledged he opened the door on his own volition after Stephen White allegedly refused to open the door and walked away from him. The prosecution never argued or relied on a consent theory at the trial, and never mentioned Armani's assertion during final arguments. Under the *Jackson* standard, a reviewing court considers **only** the prosecution's evidence, presented in its case-in-chief, and determines whether that evidence, at the time the prosecution rests its case-in-chief, presented a sufficient question of fact on all the essential elements to allow the prosecution to continue. In the case at bar, when the prosecution rested its case-in-chief, there was no evidence on the record in support of any consent exception to the Fourth Amendment warrant requirement.

Finally, even if this Court for whatever reason finds that Ms. White initially consented to Officer Green entering her house, via her son's alleged opening of the door at her direction, the record clearly shows she revoked that purported consent prior to any acts which constituted resistance or obstruction of Officer Green. According to both her testimony and Officer Green's, she first encountered the officer when he was already inside the house, and immediately questioned his authority to be inside the house and to search the upstairs and/or basement areas of the house. Officer Green did not allege she took any physical action to bar him from continuing to search through the house for Stephen White until after she clearly stated he could not continue to search and must leave her residence unless he had a search warrant. Federal and Michigan constitutional law holds that a person can either revoke or limit the extent of a waiver of Fourth Amendment rights through consent. See, for example, *Florida v Jimeno*, 500 US 248;

111 S Ct 1801; 114 L Ed 2d 297 (1991); *People v Dagwan*, 269 Mich App 338 (2006). On this record, even if assumed for the sake of argument that Ms. White initially consented to Armani opening the door to Officer Green, she subsequently revoked that consent, and unambiguously indicated to the officer he did not have her consent to search these areas of her residence before she took any actions to physically bar his progress.

Accordingly, this Court should find the prosecution failed to present constitutionally sufficient evidence, under the law, that Officer Green was acting within his authority when he entered the house without a search warrant for that address. As such, the prosecution failed to present evidence to enable a jury to find beyond a reasonable doubt a requisite element of the offense:

(1) Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know **is performing his or her duties** is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both. MCL 750.81d(1). (Emphasis added).

In *People v Moreno*, 491 Mich 38 (2012), the Michigan Supreme Court, overruling the decision in *People v Ventura*, 262 Mich App 370 (19), held the enactment of MCL 750.81d in 2002 did not abrogate the common law rule that a person has the right to resist illegal police conduct. In *Moreno, supra*, the facts were quite similar to those in the case at bar. The police had arrest warrants for a man named Adams. They went to an area where Adams' car was parked, and went up to a house owned by Mr. Moreno. They heard voices inside and people running around inside the house. Eventually, someone opened the door to the house, and the officers smelled "intoxicants and burnt marijuana" coming from inside the house. When the officers stated they were looking for Adams, and wanted to ascertain the identities of the people in the house, Mr. Moreno came to the door and told the officers he needed to see a search

warrant before the officers could enter. They entered anyway, and engaged in a struggle with Mr. Moreno. He was charged and convicted under MCL 750.81d for resisting the officers.

At trial, while the judge ruled the officers did not have the legal authority to enter Mr. Moreno's house,⁸ he further ruled that the statute had abrogated the common law rule that a person has the right to resist illegal police conduct. According to the judge, the statute eliminated any requirement for the prosecution to prove the officer's conduct was legal. While the Court of Appeals affirmed the trial judge's decision, the Michigan Supreme Court overruled that decision and the similar published opinion in *Ventura, supra*. The Court wrote:

While the Legislature has the authority to modify the common law, it must do so by speaking in "no uncertain terms." Neither the language of MCL 750.81d nor the legislative history of this statute indicates with certainty that the Legislature intended to abrogate the common-law right to resist unlawful arrests or other invasions of private rights. We cannot presume that the Legislature intended to abrogate this right. Therefore, we overrule *People v Ventura*, 262 Mich App 370; 686 NW2d 748 (2004), to the extent that it held that the Legislature affirmatively chose to modify the traditional common-law rule that a person may resist an unlawful arrest. Because the Court of Appeals in this case relied on *Ventura* and extended its holding to the context of illegal entries of the home, we reverse the judgment of the Court of Appeals and remand this matter to the trial court. On remand, we instruct the trial court to grant defendant's motion to quash the charges on the basis of its ruling that the officers' conduct was unlawful.

491 Mich at 41. (Footnote omitted).

The *Moreno* decision directly controls the case at bar. As Officer Green did not have the constitutional authority to enter Ms. White's personal residence based on the arrest warrants issued against Stephen White, and no exceptions to the Fourth Amendment warrant requirement apply, Ms. White had the right, under the common law, to resist his unlawful entry into her

⁸ While the opinion does not review or discuss the details of the trial court's ruling on the legality of the entry, it is likely, given these facts, that the judge relied at least in part on the decision in *Steagald, supra*, in that there is nothing in the opinion that indicates Mr. Adams lived at Mr. Moreno's house.

private property. As with Mr. Moreno, she did not violate MCL 750.81d by resisting the officer's actions as there was insufficient evidence to prove Officer Green was acting legally.

This Court should find the prosecution failed to present legally and constitutionally sufficient evidence in support of the conviction. The conviction violated Ms. White's Due Process rights. *Jackson v Virginia, supra; Hampton, supra*. That conviction, and the accompanying sentence, should be vacated, and the charges dismissed with prejudice.

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court to either grant leave to appeal, or peremptorily reverse her conviction and sentence, and order the charge dismissed with prejudice.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Peter Jon Van Hoek

BY: _____

PETER JON VAN HOEK (P26615)

Assistant Defender

3300 Penobscot Building

645 Griswold

Detroit, Michigan 48226

(313) 256-9833

Dated: December 16, 2014.

APPENDIX A

RECEIVED by MSC 12/16/2014 3:06:34 PM

BRIDGEPORT TWP POLICE
DEPT
CRIME REPORT

Report Date/Time: 9/6/2012 12:56:42 AM

Case No. 1286300585
Report No. 1286300585.1
Case Status ACTIVE

report).

INTERVIEW SUSPECT STEPHANIE WHITE:

[spoke with White in the rear of my patrol vehicle. I asked her if she knew where Stephen could be. She advised that he could be anywhere, that he hangs out with several different people, and she didn't know where he would be.

[explained to White why she was in handcuffs. I advised her that she was interfering with an investigation and causing a safety concern for me and my fellow officers by approaching us in the house. I advised White that her son Stephen has a warning that he is possibly a violent offender.

White advised she understood why I placed her in handcuffs. I advised White that I would not take her to jail tonight if she would contact 911 as soon as Stephen came back to the residence. I advised White that I would still be making a report of the incident but, because she had calmed down and has helped the BTPD, in the past I would not take her to jail tonight.

White stated she would contact 911 but she didn't think that Stephen would come back to the house because of all the police.

INJURIES:

No injuries were reported at time of incident.

WARRANTS:

LEIN 7037 8476 09/05/12 2020 SCCDCOMP2.

MI7386300

RE: WHITE/STEPHEN/DEMARSHA/ UM 02/27/1991

FOR: BRENT GREEN/BP

OPR: BRENT GREEN

CAUTION-CAUTION-:VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991

RAC:BLACK SEX:MALE HGT:603 WGT:235

HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676

FBI:657904KC4 PRN:670702

SID:2579534X SMT:TAT L ARM

ADDNL SMT:TAT R ARM

ADD:4576 HEPBURN ST SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS

OOC:TRESPASSING

OCA:11-8930 DOW:03/15/2012

COURTORI:MI730035J-CT 70TH DIST SAGINAW

CRTDOCKETNO:11-008930-OM

OCG:TRESPASSING

BRIDGEPORT TWP POLICE
DEPT
CRIME REPORT

Report Date/Time: 9/6/2012 12:56:42 AM

Case No. 1286300585
Report No. 1286300585.1
Case Status ACTIVE

RECEIVED by MSC 12/16/2014 3:06:34 PM

PICKUP:WILL PICKUP WITHIN 50 MILES

BOND:\$ 5000 CASH OR SURETY

REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND

ALIAS NAME:FONZ/X//

ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT
APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1413 HRS

MODIFIED LEIN:03/15/2012 1554 HRS

SYSIDNO:42910568

CAUTION-CAUTION-:VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991

RAC:BLACK SEX:MALE HGT:603 WGT:235

HAI:BLACK EYE:BROWN SOC:363-13-1676

FBI:657904KC4 PRN:670702

SID:2579534X SMT:TAT L ARM

ADDNL SMT:TAT R ARM

ADD:4576 HEPBURN SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS

OOC:TRESPASSING

OCA:11-9134 DOW:03/15/2012

COURTORI:MI730035J-CT 70TH DIST SAGINAW

CRTDOCKETNO:11-009173-OM

OCG:TRESPASSING

PICKUP:WILL PICKUP WITHIN 50 MILES

BOND:\$ 5000 CASH OR SURETY

REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND

ALIAS NAME:FONZ/X//

ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT
APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1415 HRS

MODIFIED LEIN:03/15/2012 1555 HRS

SYSIDNO:42910587

RECEIVED by MSC 12/16/2014 3:06:34 PM

**BRIDGEPORT TWP POLICE
DEPT
CRIME REPORT**

Report Date/Time: **9/6/2012 12:56:42 AM**

Case No. 1286300585
Report No. 1286300585.1
Case Status ACTIVE

CAUTION-CAUTION--VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676
FBI:657904KC4 PRN:670702
SID:2579534X SMT:TAT L ARM
ADDNL SMT:TAT R ARM
ADD:4576 HEPBURN SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS
DOC:TRESPASSING
OCA:11-9362 DOW:03/15/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:11-009466-OM
OCG:TRESPASSING
PICKUP:WILL PICKUP WITHIN 50 MILES
BOND:\$ 5000 CASH OR SURETY
REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND
ALIAS NAME:FONZ/X//
ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT
APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1426 HRS
MODIFIED LEIN:03/15/2012 1558 HRS
SYSIDNO:42910668

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676
CTN:731200412501
ADD:2855 GERMAIN SAGINAW MI 48603

OFF:MISDEMEANOR FOR AGGRAV ASSLT - FAMILY-STGARM
CIT:750.813 (DOMESTIC VIOLENCE - SECOND OFFENSE NOTICE)
OCA:470-12 DOW:08/03/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:12-004350-SM
EXTRADITE:YES PICKUP:WILL PICKUP STATEWIDE
BOND:\$ 5000 CASH OR SURETY
REMARKS:DOMESTIC VIO-2ND OFFENSE/OR 10% BOND

**BRIDGEPORT TWP POLICE
DEPT
CRIME REPORT**

Report Date/Time: 9/6/2012 12:56:42 AM

Case No. 1286300585
Report No. 1286300585.1
Case Status ACTIVE

RECEIVED by MSC 12/16/2014 3:06:34 PM

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT
APPEARANCE INFORMATION CONTACT MI7386300-PD BRIDGEPORT TWP

ENTERED LEIN:08/03/2012 1549 HRS
FORWARDED TO NCIC NIC:W075596165
SYSIDNO:43185003

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:225
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI
ADD:4576 HEPBURN PL SAGINAW MI 48603

OFF:CRIMINAL BENCH FOR CONTEMPT OF COURT FTA TO PSI
OCA:12-10592 DOW:08/13/2012
COURTORI:MI090015J-CT 18TH CIR BAY CITY
CRTDOCKETNO:12-10592
PICKUP:WILL PICKUP STATEWIDE
REMARKS:FAILED TO REPORT TO PSI FOR SIGNUP, VIOL BOND CONDITIONS NO BOND
ALIAS NAME:LONG/JOHN/DEMARSHA/
MI0910900-SO BAY CO
ENTERED LEIN:08/19/2012 1156 HRS
SYSIDNO:43211177

IMMED CONFIRM WITH MI0910900-SO BAY CO

ARREST:
Stephen was not located.

Stephanie was released on scene.

OTHER DEPARTMENTS:
I was assisted by Buena Vista Ofc. Norris, and SCSD Dep. House, Dep. Jamie, and Dep. Wise.

EXTERNAL DOCUMENTS:
CCH

STATUS:
Open pending SCPO review

CASE STATUS:
ACTIVE

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

STEPHANIE WHITE

Defendant-Appellant.

Supreme Court No. _____

Court of Appeals No. 318654

Lower Court No. 12-37836FH

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

PETER JON VAN HOEK, being first sworn, says that on December 16, 2014, he mailed one copy of the following:

NOTICE OF HEARING
APPLICATION FOR LEAVE TO APPEAL
PROOF OF SERVICE

TO:
SAGINAW COUNTY PROSECUTOR
Courthouse
111 South Michigan Avenue
Saginaw, MI 48602

/S/ Peter Jon Van Hoek

PETER JON VAN HOEK